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ABSTRACT

There is limited security in terms of employment with California community colleges. This paper addresses both the rights of administrators to continued, long-term employment, and the obligations of a college district to continue employment of an administrator. Following an introduction on turnover, discrimination, categories, and regulations of employment in California community colleges, this report contains information on employment law. Two individual scenarios are included: (1) non-reappointment of an administrator, and; (2) a situation in which an administrator accepts outside employment. For both, issues and outcomes are discussed. Other types of employment are described, such as contract and certified employees, which are short-term appointments that serve at the will of the governing board. Classified positions are generally more secure than certified positions because of the career nature of the employment relationship. Legal topics explored include the California Education Code, Assembly Bill 1725, board policies and procedures, political issues, and citations. Implications regarding districts and administrators cite relevant issues for both. (AS)

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Job Security for Administrators in the California Community Colleges

by

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Compton Community College

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Job Security for Administrators in the California Community Colleges

Introduction

Background

There is much turnover in the ranks of administrators within the California Community Colleges. The lack of security, measured in terms of long-term employment, is greater in urban environments than in the rural communities. Turnover in presidential and academic administrative positions is greater than the turnover in non-academic management positions. The subject of politics in employment decision-making surfaces when a President/Superintendent or a senior administrator is hired, fired, transferred or not reappointed. Discrimination in employment is illegal. There are many laws directly relating to specific protected groups. However, employment actions that are detrimental to individual administrators often fall outside of the purview of statutes, institutional policy, common practice or even discrimination as commonly defined. Administrative employment relationships between the individual and the college vary by position and by college. However, in the California Community Colleges, there are commonalities among most of the positions based on the system structure. The State has established a statewide community college system that is under the auspices of and administered by the Board of Governors. There are thirteen members appointed by the Governor and approved by the State Senate. This paper address some of the rights of administrators to continued employment and, conversely, addresses some of the obligations of a college district to continue the employment of an administrator.

Administrative positions in the California Community Colleges are categorized as "Certificated" or "Classified." The certificated positions are educational, academic and student services related positions. These positions usually include the President, Vice President of Instruction, Vice President of Student Services, Academic Deans, the Athletic Director, and various other directors having direct influence on policy making that affects the students. Certificated positions are contract positions, implied or by executed agreement. There may be specific employment contracts engaged for these positions. The President of a college will usually be under a time certain contract that addresses performance standards, compensation, and rights. These contracts are commonly three-year contracts, but may vary, depending on the circumstances and environment. Most of the other certificated administrative positions are annual appointments and fall under the rules of the California Education Code. Classified administrative positions normally relate to the business functions of the college. These positions commonly include the Business Manager, the Director of MIS, the Director of Facilities, and the Director of Security. The positions may be contracted for a specific period of time, such as two to three years. These classified positions are generally career positions. Career positions imply that there is an ongoing relationship between the employee and the college and that there are no definite time limits in effect.

The California Education Code provides for the establishment of the Merit System. Districts may elect to become a Merit System district through a vote by the classified staff. The Merit System establishes a level of protection and

representation for all classified staff within a district and serves to ensure fair employment. The Merit System is administered by a Personnel Commission. The personnel commissioners are legislated to have authority over the Board of Trustees with respect to individual grievances. They are the final local authority on personnel issues relating to classified employee rights and protection.

A recent development in the employment picture of administrators is that of administrative unions. The administrators of the Los Angeles Community College District have organized into an association. The Administrators' Association represents the administrators on employment issues to the District and works on the behalf of the administrators similar to the dealings of other unions. The Association represents the administrators in collective bargaining. It provides a level of security and protection to the members that was not available previously. The Association works to ensure fair treatment and due process for the members. They are also part of the administrative grievance process.

Employment Law and the California Community Colleges

Constitutions are the fundamental source for determining the nature and extent of governmental powers. They are also the source of protection for the people and the basis for individual rights and liberties. The First Amendment of the U.S. Constitution protects speech, press and religion. These are issues that often surface in education. The Fourteenth Amendment provides for due process and equal protection. They protect the rights of both institutions and the people. The federal Constitution has no specific provisions for education.

California has legislated the establishment of the California Community

College System in its Education Code. Title 1 of the Education Code covers all of the general provisions for state education, including the Merit System. Compton College is a Merit System district. In addition to the general provisions of the Education Code, Title 3, Postsecondary Education, Division 7, Parts 43-51, specifically address the authorities, structures, administration, programs, facilities, finance and employment of the California Community Colleges. Part 51, Chapters 1-4, Sections 8700-88999 address community college employment.

California, through the Office of Administrative Law, has developed administrative rules and regulations that govern all education within the state. The California Code of Regulations (CCR) Title 5 governs Education. Division 6, Chapter 4, Title 5 is devoted to the California Community College Employees.

California has established the Board of Governors to oversee the community college system. The Education Code defines their duties, rules, regulations, authority and delegation. The Education Code, Sections 72000-72999, establishes local districts and local governing boards. The local Board of Trustees, comprised of elected representatives from the local community, are authorized to develop and adopt policies and procedures by which to govern the individual districts and colleges. These policies and procedures are law, as the authority for their creation is provided for within the California statutes.

In general, all of the rules and regulations are aligned with one another. However, in the event that there are conflicting rules between one or more of the provisions, the hierarchy of the judicial system then determines which authority applies. In addition to those provisions listed above, there are other laws which

may affect individual situations such as state common law, foreign or international law, general state labor laws, academic customs and case law.

Individual Scenario(s)

Scenario 1: Non-Reappointment of Administrator

The Director of Research for Compton Community College District has been employed for twenty years as an academic administrator. He is fifty-five years old and has received good evaluations during his career at the college. He has been planning to work for another ten years at this same position and then to retire. He is well liked by most of the community and is fully capable of performing the duties and responsibilities of this position now, and in the future. His annual renewal has been automatic in the past.

This year, the Board of Trustees welcomed two new members and said goodbye to two senior members as a result of the recent local elections. The new members wanted to build their own college and to develop their own team. They were careful to avoid accusations of discrimination and were able to convince a majority of the Board to decide on making a change in that position. The Board, in consultation with the President/Superintendent, voted not to renew the Director of Research for the coming year. As a result, the March 15th and the May 15th notices were given to the Director of Research indicating that his last day of employment would be June 30th of this year. No substantive explanation was given as to the reason why the appointment was not renewed. The Board of Trustees and the President/Superintendent were very careful to be able to defend against allegations of employment wrongdoing should this matter

be brought before the courts. The Director of Research is suing the District for his job and is alleging discrimination and wrongful termination.

Scenario 2: Administrator Accepts Outside Employment

The Director of Student Services of a Compton Community College has served satisfactorily as an academic administrator for three years. She has been unhappy with the lack of support that she has received from the college in her pursuit of career enhancements. She is motivated by money, power and career growth. She feels that there is limited opportunity for her at this college and has accepted a full-time teaching position at another community college. She will be teaching Monday through Friday, from 8:00 a.m. to 11:00 a.m. She has scheduled most of her work at her new college, including office hours, from 11:00 a.m. to 12:30 p.m., Mondays through Fridays. She has informed her supervisor that she is not going to resign and that she plans on working as Director of Student Services by changing her work hours to 1:00 p.m. to 10:00 p.m. She states that classes are in session until 10:00 p.m. and that she is needed in the evening to provide services to the students. She further alleges that she is able to fulfill all of the requirements of her position within the new time schedule. She states that there are other personnel in the mornings that will be able to handle the morning requirements. As an administrator, she points to the practice that administrators work flexible schedules. Hours vary according to the needs of the department. Her supervisor does not support this request. The supervisor has requested the Director's resignation. The supervisor states that the needs of the district cannot be met if the Director is not available in the

mornings. The supervisor has indicated that the District will proceed with termination procedures if the Director does not resign. The Director does not resign. She has strong support from the Board of Trustees based on the strength of her personal ties with individual board members. The Director alleges that termination is being forced upon her. She is the only Hispanic manager and says that she is being discriminated upon as a result of her race.

Issues

Scenario 1

There is an overarching issue of whether or not the employee has rights to continued employment. This person has served the college well for twenty years and has no desire to end this relationship. Surely, the college owes the employee something, even if that obligation results from a sense of fairness. However, the issue of fairness extends beyond the concept of whether or not the actions by the college were legal. The college feels that it has met all legal obligations and does not desire to continue the employment relationship. The college contends that there were no tenure rights involved in this situation. The employee has alleged discrimination and the lack of due process. If the employee is successful in proving that either of these violations were present in this situation and substantive in the decision not to rehire, then the actions by the college would be ruled illegal and the college would be directed to reinstate the employee. Most racial discrimination cases are brought forth under the Equal Protection Clause of the Fourteenth Amendment and Title VII of the Civil Rights Act of 1964. Under the Equal Protection Clause, the intent to

discriminate must be shown by the plaintiff. Under Title VII, discriminatory intent need not be proved. Rather, the plaintiff need only show that the effect of the action resulted in discrimination. In this situation, the District was careful to avoid actions and statements that could be construed as discrimination. In addition, the District followed all of the required notices, actions and deadlines as required by law, including the Education Code and local policy.

Scenario 2

The Director of Student Services has accepted another position with another college that interferes with the existing work schedule of her current position. The first issue is whether or not an employee can work at two full-time positions. The State does not prohibit an individual from working multiple employments. In fact, if the State did restrict employment, the issue of liberty as guaranteed by the U.S. Constitution might be raised as having been violated. Outside employment, while being employed full-time, is a local issue that varies from district to district. In this case, the District does not have a policy that restricts outside employment. From the employer's point of view, the issue should be whether or not the employee is fulfilling the requirements of the position. The next issue is whether or not the Director has the right to challenge her work schedule as set by the District. She states that she is able to perform the duties and responsibilities of the position of Director within the proposed work schedule. Districts have the right to set employee work schedules. However, this college has the practice of flexible work schedules for administrators. In addition, there was never the explicit agreement of a

particular starting and ending time for the Director's work day. Therefore, before the District can require a specific work schedule for this position, it must review the work requirements of the other administrators. The District must be consistent in its employment practices. The District will need to show that the requirements of the position are not being met as a result of the work schedule. The District will need to show an attempt at a reasonable balance between the needs of the District and the rights of the employee. The Director has alleged racial discrimination. If she is able to prove that the basis of the termination is racial discrimination, then the courts will require the District to reverse the termination. The District is not terminating the individual because of her race. However, the Director of Student Services is the only Hispanic manager in a college with 50 % Hispanic students in a community that has 50 % Hispanic residents. The District must defend the action as not causing racial imbalance among its employees. The matter that is to be addressed is that of whether or not the Director is able to fulfill the requirements of the position even though she is not available in the mornings. As an administrator, there are issues of availability, meetings, supervision, management, specific tasks, past practices and reasonable accommodation.

Legal

California Education Code

Section 72411.5 of the California Education Code states that "In the absence of an expressed appointment or contract, every administrator shall serve in his/her administrative assignment at the pleasure of the governing

board." This is generally referred to as "At Will" employment. This protects the District against continued employment rights for administrators.

Section 72411 limits administrative employment contracts to a maximum of four years. Administrative appointments without expressed employment terms are subject to annual termination at June 30th. Notices of potential non-reappointment shall be given to the administrator on or before March 15th.

Sections 87001-87003 defines Academic Employees, Classified Employees, Administrators, and Faculty.

Article 3, Chapter 1, Part 51 of Division 7 addresses the interchange of personnel between academic and classified positions.

Sections 88000-88270, Chapter 4, Part 51 of Division 7 are the provisions relating to Classified Employees. These sections address work assignments, work schedules, benefits, retirements, layoffs, etc.

California Code of Regulations

The California Code of Regulations is published under the direction of the California Office of Administrative Law. The Courts are required to take judicial notice of contents of regulations published in the Code of Regulations pursuant to Government Code, Section 11344.6. Affirmative action and equal opportunity are issues discussed in Chapter 4 Employees.

AB1725

Assembly Bill 1725 became law in July 1990 and mandated a series of sweeping changes in the governance and operations of the California Community Colleges. The law provides for local districts to undergo a process

by which administration and faculty may agree on the implementation of this law. The law addresses the hiring policies and procedures of management. Compton Community College has defined management personnel to include the President/Superintendent, Assistant Superintendents, Deans, Associate Deans, Directors, and Coordinators.

Board Policies and Procedures

The local district adopts policies and procedures by which it governs the operations of the college. These Board Policies, personnel policies, administrative policies, collective bargaining agreements, personnel practices, personnel commission rules, etc., are treated as local laws.

Political

Compton College has a five member Board of Trustees. The Board approves all personnel actions, including hiring, compensation, termination, promotion, and discipline. A vote by any three members approves any personnel action within the jurisdiction of the local governing board. The Chancellor's Office has adopted an arms-length posture in the administration of local affairs. Therefore, for most purposes, the local district is autonomous in the decisions of personnel within the bounds of state and federal employment laws. A result of the local nature of the governing board are the frequent personal relationships that are present between the employees and the individual board members. A number of the employees have been classmates, friends, or neighbors of the board members. It is not uncommon at Compton to win a seat on the Compton College Board of Trustees with as few as 1,500

votes. There are times the Board of Trustees disagree with the administrative recommendations. The reasons for the disagreements are not necessarily explained to administration. In addition, there is constant communication and positioning between the students, employees and the board members. It is the challenge of the President/Superintendent and the administration to work through the politics of a split Board. Many issues are decided on a majority vote.

Citations

In Spurlock versus the Board of Trustees, Wyoming (1985), the court found that the school district was under no obligation to renew the contract of a principal. The protection of tenure extends only to teaching positions, or as defined by the State. Tenure rights may extend to non-teaching certificated positions, but normally do so under local district rules and regulations. Tenure may be negotiated for non-teaching positions as part of an employment agreement with a bargaining group.

In Smith versus Board of Education of Urbana School District No. 116, 7th Circuit (1983), the court held that there was no due process violation when coaches were not reemployed. The reasoning was that coaches were not covered under the state tenure law, and therefore had no property interest in reemployment.

In the Board of Regents versus Roth, U.S. Supreme Court (1972), the court held that David Roth was not entitled to a reasonable expectancy of continuous employment, which would then create a property interest meriting due process protection. Mr. Roth was only entitled to a property interest for the

duration of the contract. Nonrenewal of a contract violates no rights. The Court addressed the issue of "liberty" interests. Liberty interests would be applicable if there was damage done to Mr. Roth and his potential for future employment during the process of nonrenewal. Examples of damage would include negative statements, inaccurate statements, or any other actions that might diminish the employee's name, reputation, honor or integrity.

In Mt. Healthy City School District Board of Education versus Doyle, U.S. Supreme Court (1977), Doyle claimed that he was not renewed as a teacher as a result of his exercising his constitutional rights under the First and Fourth Amendments. The Court asked whether other legitimate grounds, independent of the amendment rights, were involved in not extending tenure. If other grounds existed, the fact that the school board included some impermissible grounds in its decision would not save the teacher's job. The Court tried to balance the rights of the individual with the important social interest in conducting effective and efficient public education.

In Cleveland Board of Education versus Loudermill-Parma Board of Education, U.S. Supreme Court (1985), the public employee was given a hearing only after he was already dismissed. The Court ruled in the employee's favor, holding that he had a right to a hearing prior to being terminated.

In Griggs versus Duke Power Co., U.S. Supreme Court (1971), the Court ruled that tests and the requirement of a high school education were not legal as employment practices because they resulted in excluding Blacks from employment opportunities. This practice would continue the racial imbalance

among employees that was present in the organization. Employment practices or acts are illegal if they create a racial imbalance. In Scenario 2, this would clearly be the case as the college and the community is 50 % Hispanic and the Director of Student Services is the only Hispanic administrator.

In Johnson versus University of Pittsburgh (W.D. Pa. 1977), the Court dealt with alleged sex discrimination against women by the institution. As an observation, the Court states that determining qualifications for college professors on promotion and tenure were beyond the Court's field of expertise. In the absence of a clear burden of proof by the plaintiff, the Court must leave such decisions to the Ph.D.s in academia.

In Washington versus Davis, U.S. Supreme Court (1976), the Court distinguished between disparate impact cases brought under the Title VII and those under the Equal Protection Clause. An act or law may be unconstitutional solely because it has a racially disproportionate impact, regardless of purpose.

In Personnel Administrator of Massachusetts versus Feeney, U.S. Supreme Court (1979), the Court elaborated on the requirement of intent to discriminate in order to establish a violation of the Equal Protection Clause.

Outcomes

Scenario 1

The Director of Research is a certificated position. There was no expressed agreement, therefore, the position falls under the provisions of the California Education Code. Even though the Director has been working at the College for twenty years, there were no rights to continued employment beyond

the annual appointment. The most recent appointment personnel notice, as well as those of previous years, indicated a term of one year, ending June 30th of the academic year. Therefore, the District was within the law to let the Director go. The Director is currently unemployed and is seeking employment.

Scenario 2

The District has not yet documented the need for this particular administrator to work at specific times during the day. There were no agreements to a defined work day, and therefore, the District finds it difficult to mandate a beginning and ending time for this position. The situation is compromised by the flexible work schedules of other administrators. Termination due to a lack of work performance follows a due process procedure that includes documentation, verbal warnings, written warnings, and an opportunity for remediation.

The Director of Student Services is the only Hispanic administrator. If this employee leaves the District, the result will be no Hispanic leader in a college with 50 % Hispanic students. The community is, likewise, 50 % Hispanic. This is a clear example of racial imbalance and is something the District must address. The termination may not have been initiated with racial issues in mind, however, the result is increased and very obvious racial imbalance. An allegation of racial discrimination must be defended with data.

The District, upon the advice of legal counsel, reached a separation agreement with the administrator. The administrator was retained for a period of approximately six months, contingent on her advanced voluntary resignation.

The resignation coincided with the end of the year, June 30th. As a certificated administrator, the Director of Student Services was subject to the annual appointment cycle. She was subject to the renewal process, or in this case, the subject of non-renewal. March 15th and May 15th notices of non-reappointment would have been the process the District implemented to terminate the employment relationship. Termination for cause, such as unsatisfactory performance, would have required a long and involved process, with no guarantees as to the outcome. The administrator is now separated from the District and teaching full-time for her new college.

Implications

District

The District has limited liability for providing job security to its administrators. The California Education Code is clear in the area of annual certificated appointments. Generally speaking, unless there is an expressed employment agreement, all certificated appointments are for one year. The Education Code is clear in requiring Districts to provide notices on March 15th and May 15th to employees that it intends to let go.

Districts must be careful not to violate individual rights as guaranteed by the federal and state constitutions. It is illegal to discriminate against protected groups of people. Districts must comply with all federal and state labor laws in addition to its own local policies. Districts need to be consistent in rules and regulations. Districts must avoid conflicts between practice and policy.

Classified administrators are career personnel and are subject to a

probationary employment period. Once the employee has successfully completed the probationary period, there are policies and procedures to be followed in order to change the employment status of the classified manager.

Administrators

The issue for administrators is that of job security. In the California Community Colleges, the majority of senior administrators have very little job security. There are three categories of administrative employees, each with a different level of security. They are the annual certificated administrators, contract administrators, and classified administrators.

Certificated administrators are annual employees as defined by the California Education Code. Certificated administrators generally have no property interests in continued employment unless there are specific collective bargaining agreements or individual contracts that provide security to them. The specific hiring documents in each college district details the term of employment, rate of compensation, and any other pertinent information. The Education Code provides an annual procedure for due process to the administrator in the event the district decides not to renew the appointment. This is commonly referred to as the "March 15th" and "May 15th" notices. There is no specific State provisions for administrative employment rights, nor any specific federal provisions. However, administrators do not lose any of their constitutional rights or employment protections provided to the general public.

Contract administrators are those employees who have individual employment agreements with the local district. These employment agreements

will specify terms of employment including duration, compensation and rights to continued employment, if any. The individual agreements will bind the district and the administrator to the provisions agreed upon. Generally, these contracts are from one to three years in length and contain termination clauses on how the agreement would cease to exist.

Classified administrators are generally working in career positions. These positions are not time specific. There are no preset ending dates on these district positions, unless they are being filled in an acting or interim basis. Employees normally work through a probationary period and are subject to periodic employment evaluations.

Summary

Administrative positions with the California Community Colleges are political and volatile. There is limited security in terms of long-term employment. Contract and certificated employees are short-term appointments that serve at the pleasure of the governing board. The membership of the local Board of Trustees for community colleges is subject to change with every election.

Classified positions are generally more secure than certificated positions because of the career nature of the employment relationship. Classified management does not work with predetermined ending dates of employment. However, these positions are also affected by the politics of the local organization and are subject to high turnover.

Employment stability is not normally found in administrative positions in the California Community Colleges. The higher positions are less stable and

more political than the middle and lower positions. Senior positions can expect 25 % to 40 % annual turnover. Urban colleges will experience more turnover than rural colleges. Colleges with stable Boards will experience less turnover than those colleges where there are frequent changes in board membership.